

# Due Process: The Essence of Your Job in the Courts

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**Hon. Christopher Goff, Wabash Superior Court**

**Presentation Originally Developed by Nancy Smith,  
Pima County Field Trainer, Arizona, 2014**

# What will we learn today?

- Why do we have courts?
- What is Due Process, and why is it important to court employees?
- What can we as court employees or staff associated with the work of county court system do to help ensure due process rights for court clients?

# Imagine a Society Without Courts

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Part One

What would it **look** like?



# Hollywood's Version of a Society without Courts

- Video clip from Mad Max Beyond Thunderdome will be embedded.

# How is misbehavior and disputes resolved in Indiana versus the Mad Max world?

## Indiana

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- Mediation
- Arbitration
- Courts

## Mad Max

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- By combat

# Who determines the law?

## Indiana

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- United States Constitution
- Indiana Constitution
- Congress
- Indiana Legislature

## Mad Max

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- Aunty Entity

# How and who determines punishment/penalties?

## Indiana

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- Impartial judge / jury based on rule of law
- Appeal / have decision reviewed by another court

## Mad Max

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- The spin of a wheel of chance
- No appeal

# What are the penalties/punishment?

## Indiana

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- Money judgment
- Fine
- Injunction/order to do or not do something
- Jail/prison
- LWOP/death penalty in extreme cases

## Mad Max

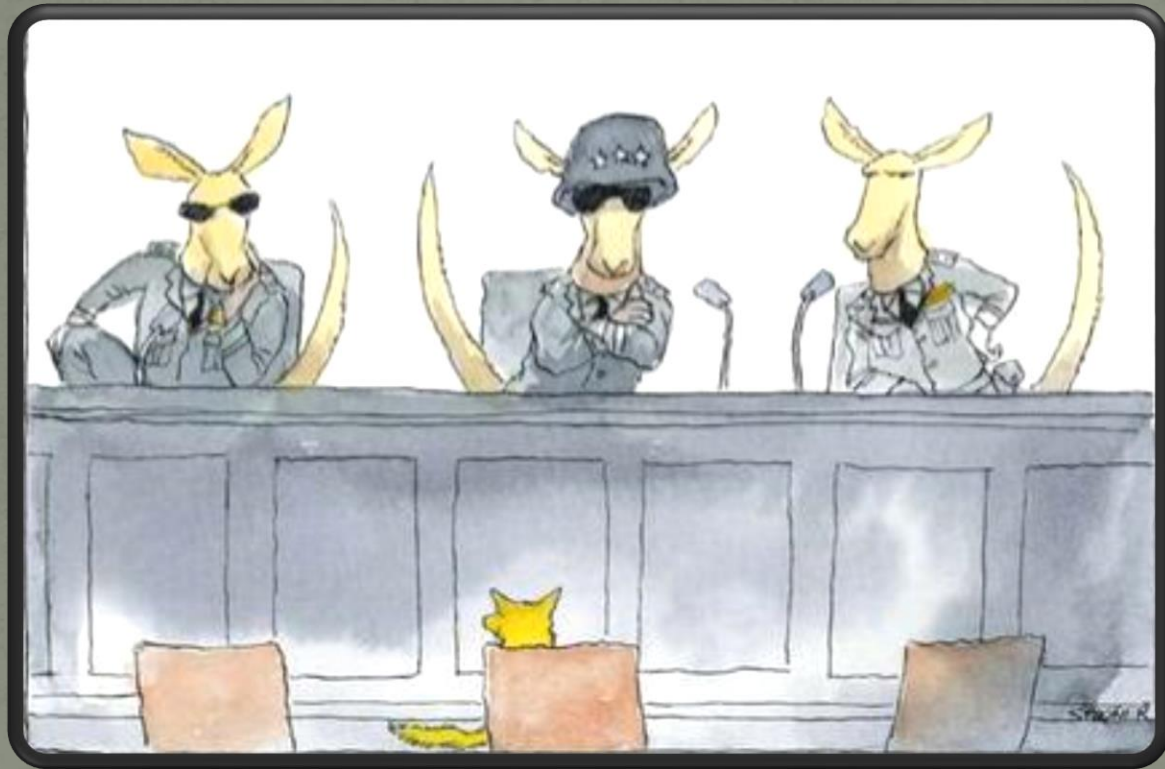
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- Death
- Hard labor
- Acquittal
- Aunty's choice
- Spin again
- Forfeit goods
- Underworld
- Amputation
- Life imprisonment

What would it **feel** like?



What about unjust courts?



# Good laws are the **heart** of good courts

- Due process is at the heart of good laws.
- Good court processes are essential to protect due process rights.



Let's get historical!



# Let's get historical!

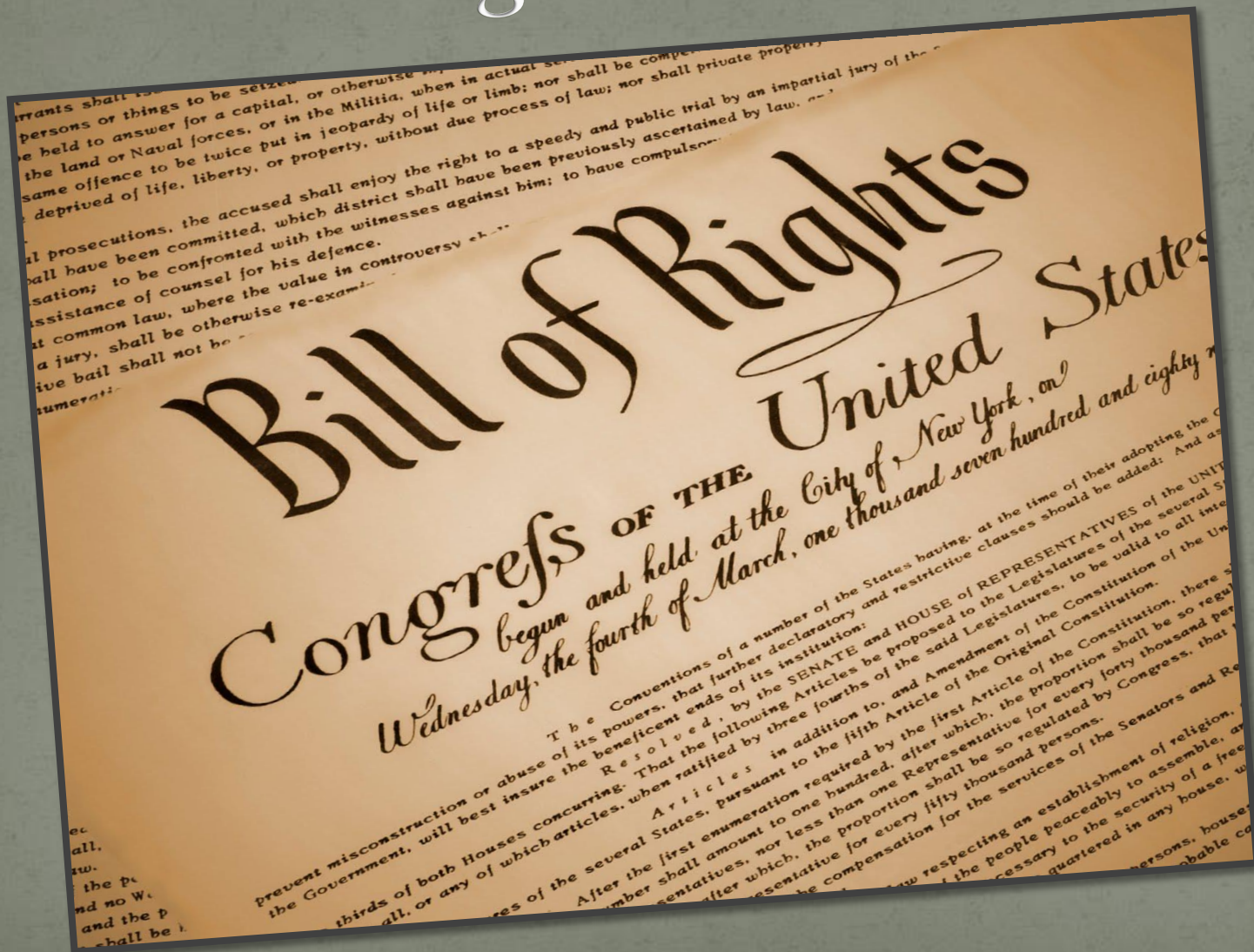


King John signs the Magna Carta at Runnymede, June 15, 1215

In the United States...

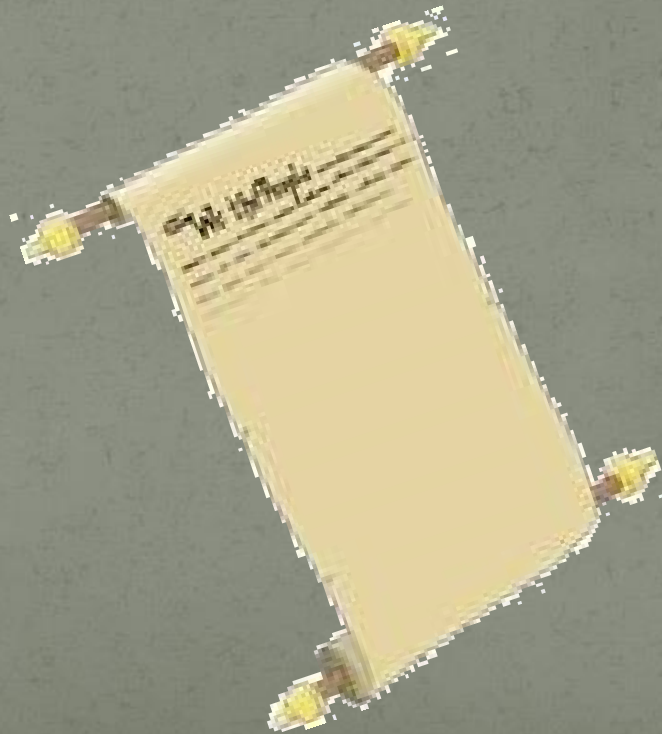


# The Bill of Rights



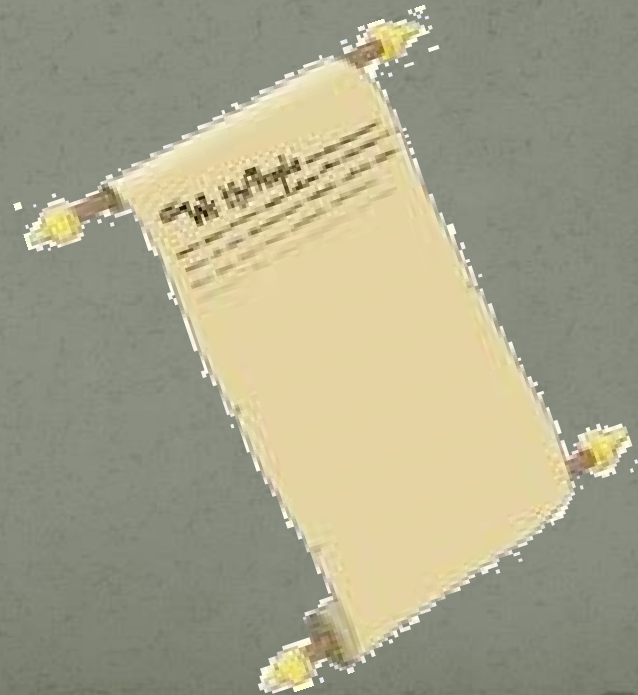
# Fifth Amendment

No person shall be ... deprived of life,  
liberty, or property, without due  
process of law...



# 14<sup>th</sup> Amendment

“No State shall . . . deprive any person of life, liberty, or property, without due process of law.”



# Indiana's Constitution

- **PREAMBLE.**

*TO THE END*, that justice be established, public order maintained, and liberty perpetuated; *WE*, the *People* of the *State of Indiana*, grateful to *ALMIGHTY GOD* for the free exercise of the right to choose our own form of government, do ordain this *Constitution*.



# Indiana Constitution, Bill of Rights

- Section 1. WE DECLARE, That all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government.



# Indiana Constitution

- Article 1, section 12: All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.



# Why do we care about history?

- Our long history of respect for law and of basic rights for all human beings established a tradition for the protection of due process rights by our legal institutions and our government.
- Just and fair courts are an essential part of our American culture and this tradition.



# A respected institution

- As a court employee, you are charged with upholding the qualities of just and fair treatment under the law.
- The canons of judicial conduct generally apply to trial court staff and are specific in this regard.

A word cloud on a light green rounded rectangle. The words are in various sizes and orientations, mostly in shades of brown and black. The words include: diligently, cooperation, minimize, appearance, perform, independence, duty, avoid, employees, competently, obligations, duties, Canon, conflict, impartiality, uphold, ethics, judicial, branch, risk, employment, confidence, impartially, impropriety, diligence, unbiased, activities, integrity, confidentiality, competence, and Outside.

# Always remember...

- Courts very often have a tangible effect on people's lives. They can take away freedom, money, children, etc.
- As judicial branch employees, it is your job to make sure the processes in place are upheld, the work is accurate, and people are treated with respect.
- History, tradition, culture, and the effect of courts on people's lives are why our jobs are unique.
- Upholding due process is a critical link in this process.

# *What is Due Process?*

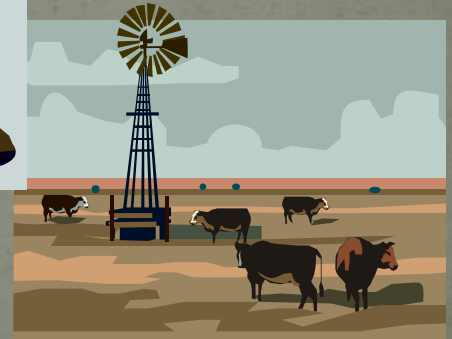


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## Part Two

# Due Process

- Deals with the administration of justice and acts as a safeguard from arbitrary denial of **life, liberty, or property** by the Government outside the sanction of law.



# What happens when laws are arbitrary?



What are the  
two types of  
Due Process?



I know, I know!  
Procedural and  
Substantive!



Very good! And what do those terms mean?



**Substantive:** Are laws arbitrary or vague? Are they constitutional?



**Procedural:** are the right procedures followed--- and followed fairly?

# DUE PROCESS

- Substantive
  - The U.S. Supreme Court, IN Supreme and Appellate Courts often rule on issues of substantive due process; that is, the constitutionality of laws.



# DUE PROCESS

## Examples



Let's Examine Examples of  
Substantive Due Process  
from Indiana

# Right-to-Work Law Ruled Unconstitutional





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Tenured/Non-Tenured Teachers

**Register Now!**

# Sex Offender Registry

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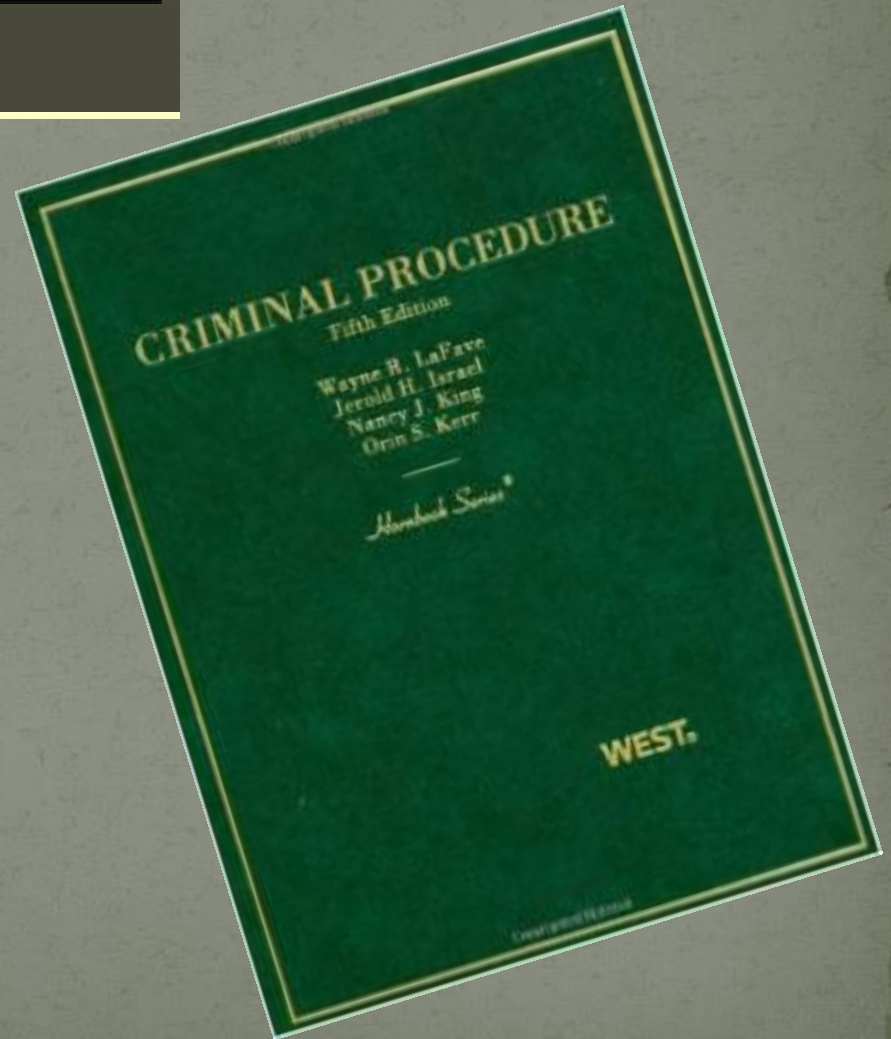


Public

Intoxication

# DUE PROCESS

- Procedural
  - Imposes restrictions on legal procedures.
  - Court employees must abide by the rules in their work too.



# DUE PROCESS

- Procedural Due Process examples:

## MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

## WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?  
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?



# *Indiana Constitution*

## *Article 1, Section 12, 13, 14, 15, 16, and 17*

- Rights of the accused in Criminal Cases:
  - 1) To a public trial, by an impartial jury, in the county in which the offense was committed
  - 2) To be heard by himself and counsel
  - 3) To demand the nature and cause of the accusation against him and to have a copy of the charges
  - 4) To meet witnesses face to face
  - 5) To have compulsory process to obtain witnesses in his favor



## *Rights of the accused, cont'd*



- 1) Right not to be put in jeopardy twice for the same offense
- 2) Not to be compelled to testify against himself
- 3) Not treated with unnecessary rigor when arrested or confined in jail
- 4) Right to bail by sufficient sureties and no excessive bail
- 5) Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay

# Let's Examine Some Examples of Procedural Due Process from Indiana

# Rights for Drug Court Participants



# Officer Alleges Due Process Violations

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# Failure to Provide Notice





# BUSING FEES

Do Due Process violations still occur in our country?



Yes, they occur in democratic countries and in other countries too!

Yes, they do!  
In all levels of government  
and even in the courts!



# What happens when Due Process is not guaranteed?



# DUE PROCESS

- Are these still valid rights?
- How can the court maximize its efforts to protect these rights?
- What is your role as a court employee in protecting due process?

QUIZ TIME!

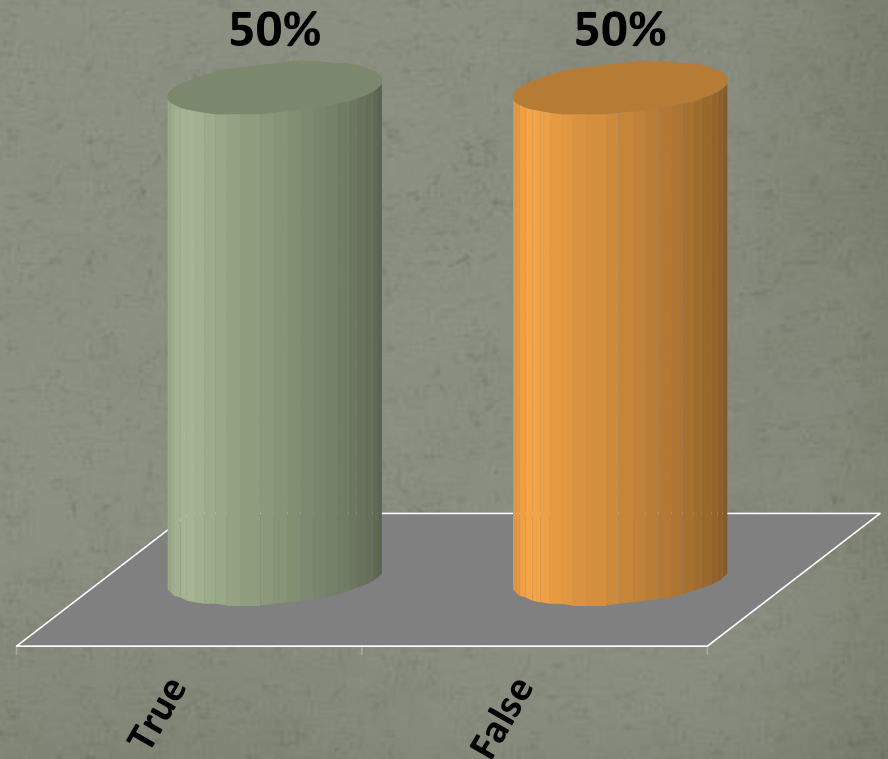
# The Butler

(2013 movie starring Forest Whitaker)

Video clip from The Butler will be embedded.

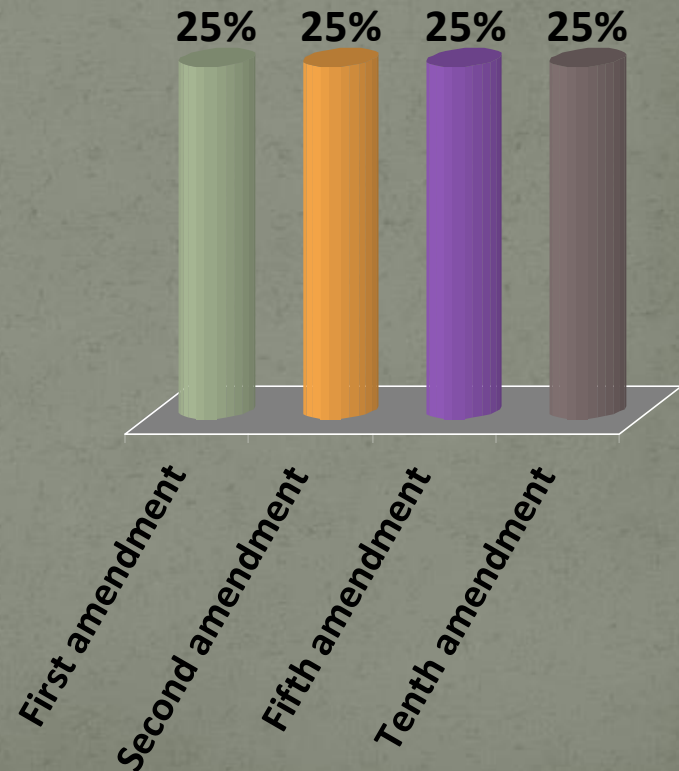
The Butler video clip illustrates a matter of substantive due process.

1. True
2. False



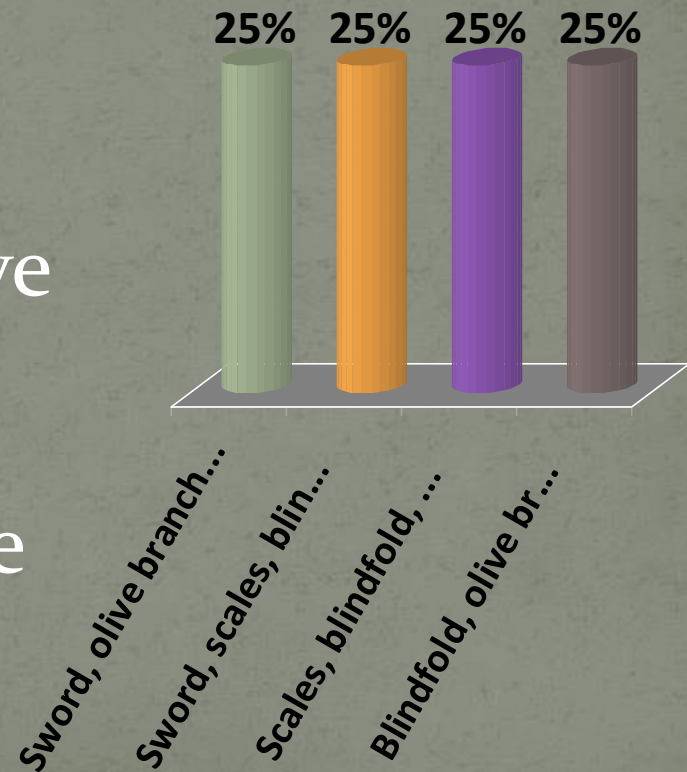
# Which amendment to the US Constitution guarantees due process?

1. First amendment
2. Second amendment
3. Fifth amendment
4. Tenth amendment



# What 3 symbols are usually seen with Lady Justice?

1. Sword, olive branch, scales
2. Sword, scales, blindfold
3. Scales, blindfold, dove of peace
4. Blindfold, olive branch, dove of peace



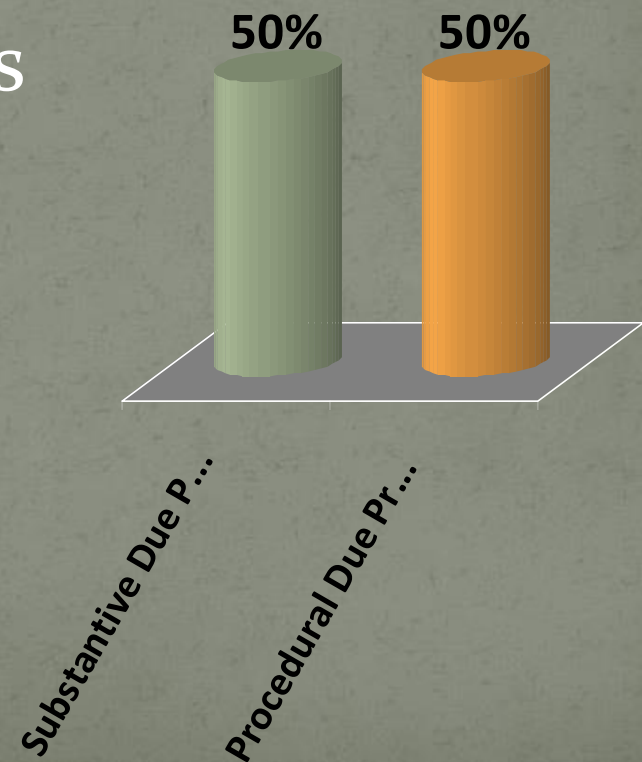
# Animal House

(1978 movie starring John Belushi)

- Video clip from Animal House will be embedded

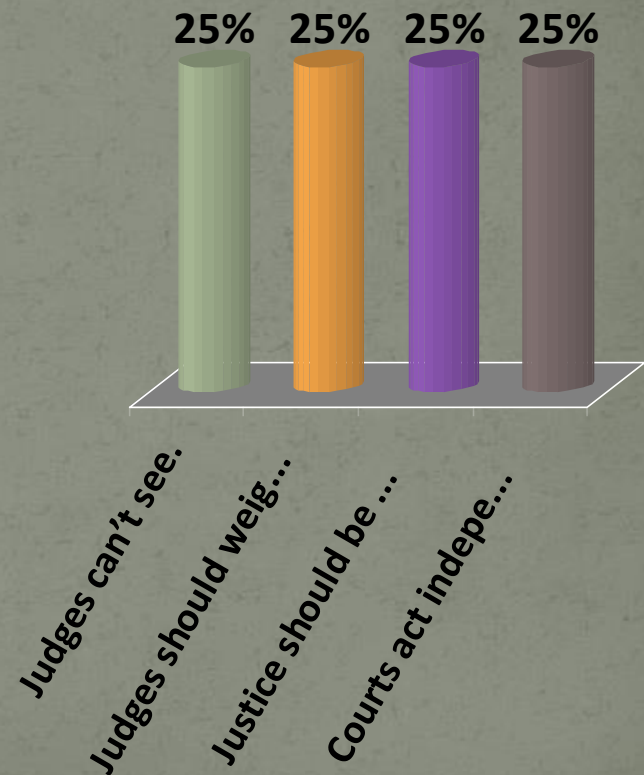
The clip from the movie And Justice for All illustrates which type of due process?

1. Substantive Due Process
2. Procedural Due Process



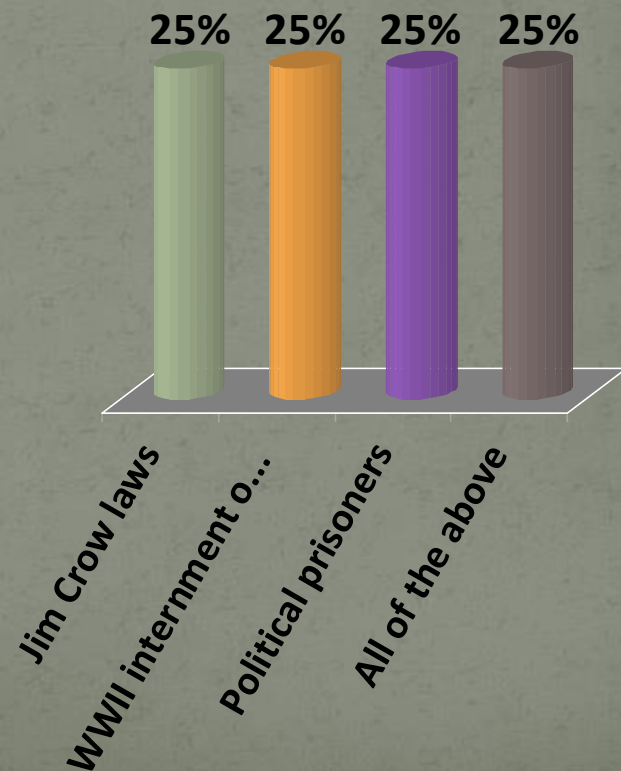
# Lady Justice's blindfold suggests that

1. Judges can't see.
2. Judges should weigh competing claims.
3. Justice should be impartial.
4. Courts act independently of other government branches.



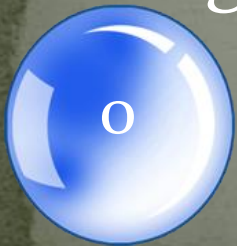
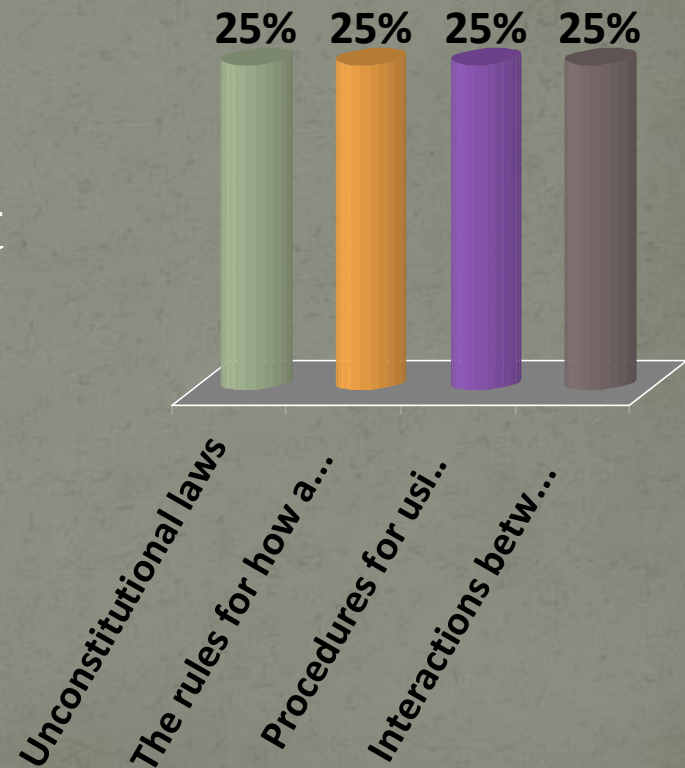
# Which of the following is an example of “arbitrary denial” of due process rights?

1. Jim Crow laws
2. WWII internment of Japanese immigrants
3. Political prisoners
4. All of the above



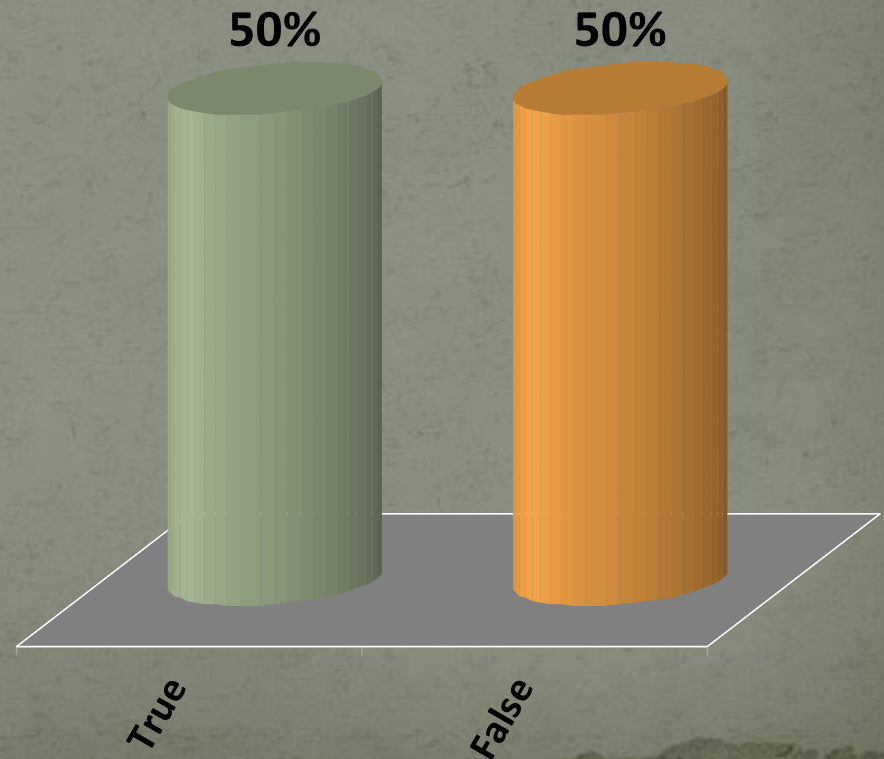
# Procedural due process is about

1. Unconstitutional laws
2. The rules for how a case moves through courts
3. Procedures for using your case management system
4. Interactions between different branches of government



The ruling of the US Supreme Court upholding the Affordable Care Act is an example of substantive due process.

1. True
2. False



Due Process is fundamental to the  
courts and to your job...

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Part Three



# Your role in due process

- Insert And Justice for All video clip here

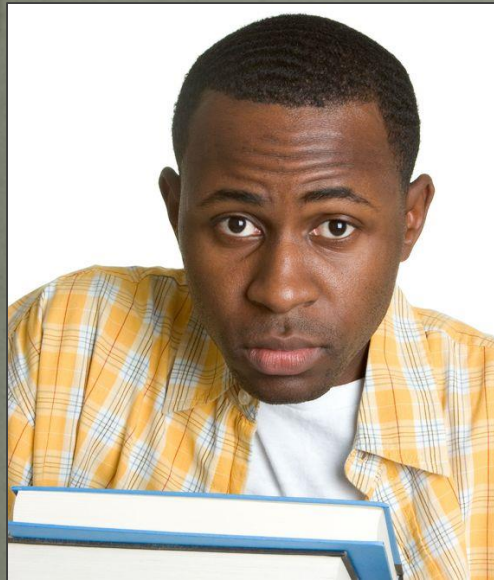


# Your role in due process

What can you do on a daily basis to make sure due process happens in your court?



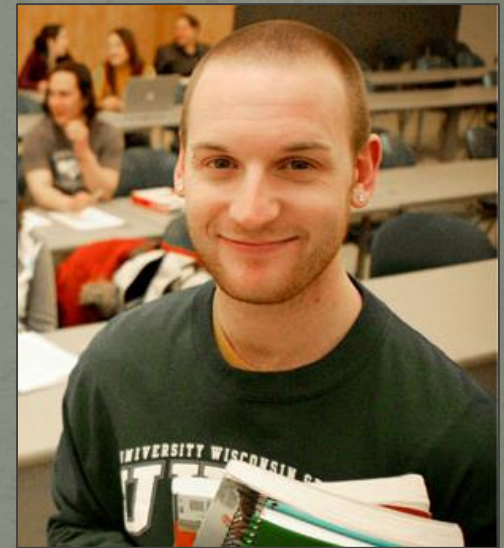
Process the  
paperwork  
accurately and  
timely!



Treat all  
customers  
equally and  
respectfully!

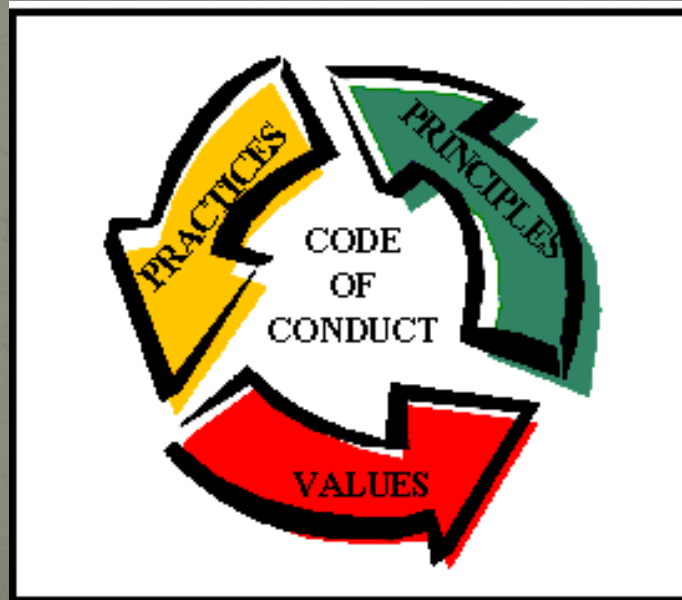


Don't discuss  
cases or  
defendants  
outside of  
work!



# Ethical Conduct Protects Due Process

- Abide by the **Code of Conduct** for Court Staff.
- What are some of the most important parts of the Code?



*No Legal Advice*



# Mini Quiz!

What's the  
difference  
between legal  
information and  
legal advice?





### *Legal information*

Facts about the law and the legal process.

### *Legal advice*

Recommendations about the course of action a client should take to further his or her own best interests.



# Mini Quiz!

Can court employees  
give legal advice?  
After all, many of you  
have worked for the  
courts for years! You  
know your stuff!





**NO WAY, JOSE!**

# *General Principles to Keep in Mind When Answering Questions*



As court staff, you have an obligation to inform court customers HOW to bring their problems to the court for resolution.

# *General Principles to Keep in Mind When Answering Questions*

You cannot advise litigants **WHETHER** to bring their problems before the court, or what remedies to seek.



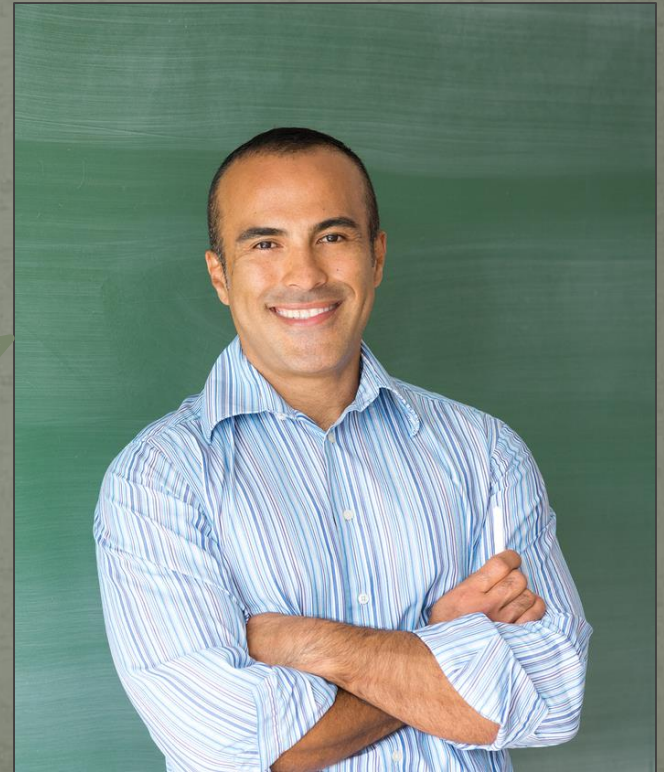
# *General Principles to Keep in Mind When Answering Questions*



You have an obligation to explain court processes to litigants, the media, and members of the public.

# *General Principles to Keep in Mind When Answering Questions*

You must always remember to remain absolutely impartial.



# *General Principles to Keep in Mind When Answering Questions*



Be mindful that neither party nor their attorneys can communicate with the judge ex parte.

# *General Guidelines*

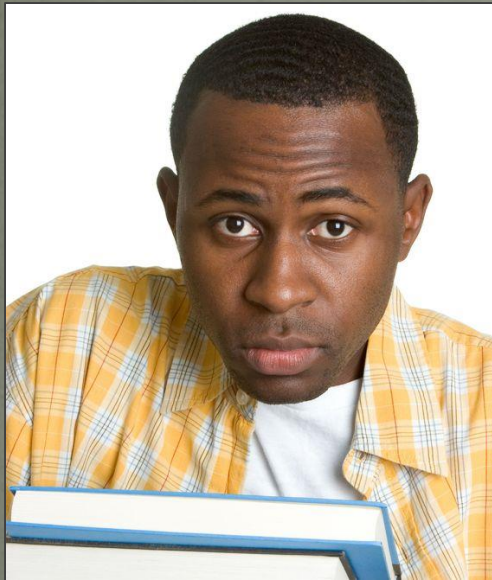
- Legal information

Calls for facts: “**who**,” “**what**,” “**when**,” “**where**,” or “**how**.”

- Legal advice

Watch out for questions that contain the words “**should**” or “**whether**.”

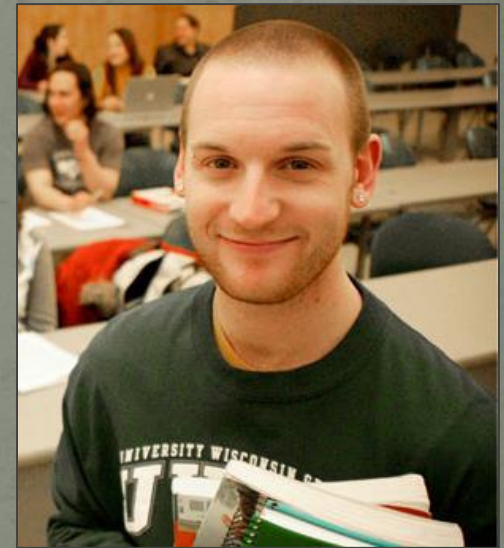
If you don't  
know, don't  
guess!



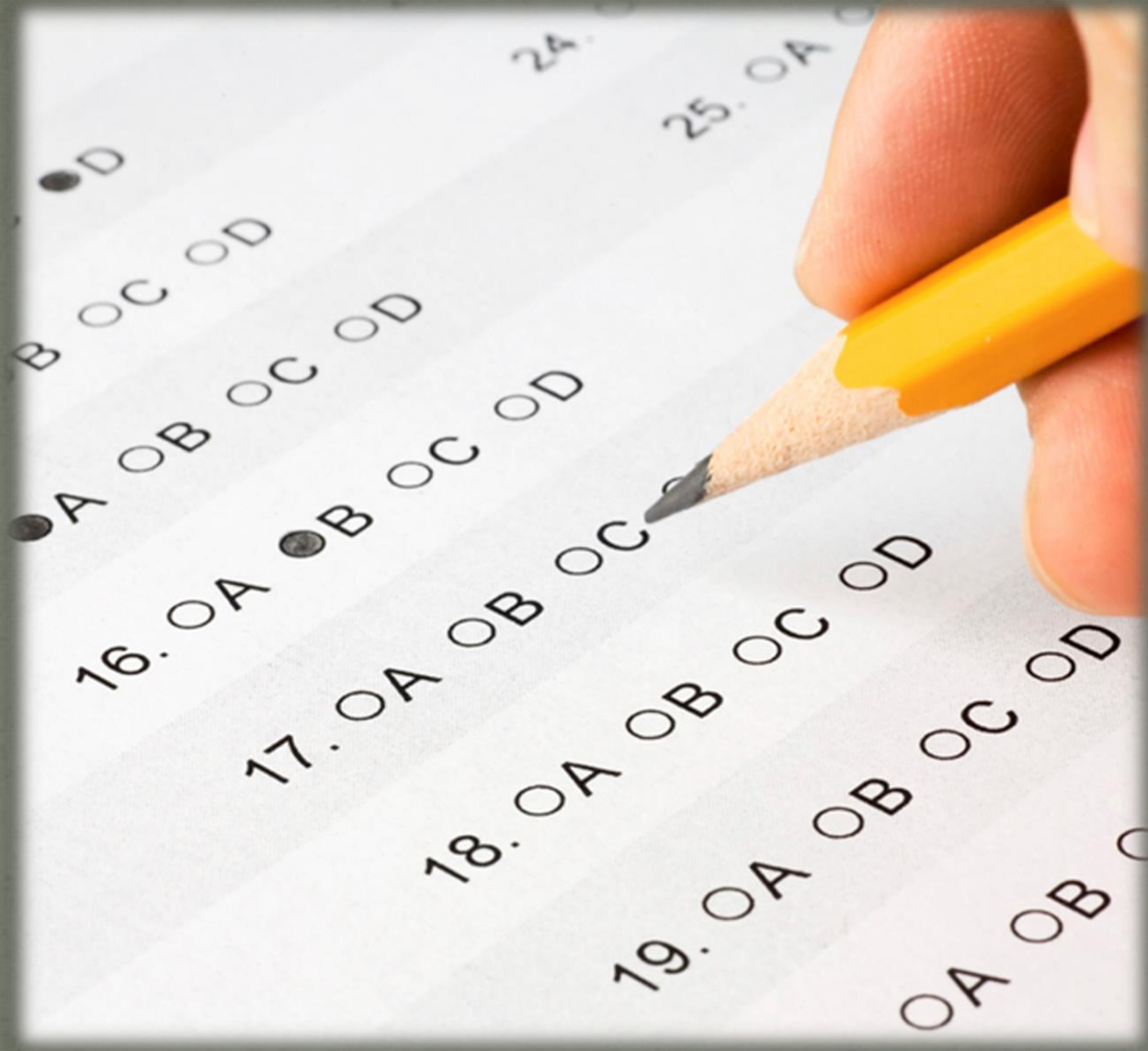
It's OK to  
say "I don't  
know" if you  
don't know  
the answer!



Get help from  
your  
supervisor!



# *Advice Exercise*



# Wrap Up

- Are there any additional questions?

Thanks for your attention!